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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION  
30 Van Ness Avenue, San Francisco 94102 557-3686

April 28, 1972

TO: All Commissioners and Alternates  
FROM: Joseph E. Bodovitz, Executive Director

SUBJECT: FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE PETE'S HARBOR  
LAWSUIT

Pete's enterprises, inc.  
c. 115 F.B.C.D.C.

Due to a typing error, a paragraph was inadvertently omitted from the previous copy of the Findings of Fact and Conclusions of Law in the Pete's Harbor lawsuit. Attached is a corrected copy of the document with the paragraph that was previously omitted indicated by underlining. Please replace the previous copy you received with this one.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN MATEO

PETE'S ENTERPRISES, INC.. )

Petitioner )

vs. )

SAN FRANCISCO BAY CONSERVATION AND )  
DEVELOPMENT COMMISSION, MELVIN B. LANE, )  
WILLIAM D. EVERS, HARRY A. BRUNO, VICTOR )  
CALVO, ROBERT COOP, ~~BRANWELL FANNING~~, J. )  
ELLIS GODFREY, A. ALAN HILL, F. J. HORTIG, )  
ROBERT MENDELSON, JAMES E. MORIARTY, )  
MELVILLE OWEN, EMANUEL P. RAZETO, CHARLES )  
M. ROBERTS, ROBERT B. ST. CLAIR, MRS. DEAN )  
A. WATKINS, HENRY M. WIGGER, MICHAEL WORNUM, )  
JOSEPH HOUGHTLING, A. MATTHEW RAGGIO, )  
WILLIAM C. WEBER, KENNETH HALL, TERRY A. )  
FRANCOIS, NORMAN Y. MINETA, JOHN H. READING, )  
and PHILIP L. JOERGER, )

NO. 164175

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

Respondents. )  
\_\_\_\_\_ )

This cause came regularly on for hearing before this Court pursuant to the petition of PETE'S HARBOR ENTERPRISES, INC., and a notice of hearing and the return thereto of respondents. CARLOS R. HULSE appeared as attorney for petitioner and EVELLE J. YOUNGER, Attorney General of the State of California, represented by E. CLEMENT SHUTE, JR., Deputy Attorney General appeared for respondents.

The Court having examined the evidence consisting of the relevant portions of the administrative record as stipulated to by the parties and two aerial photos entered into evidence by stipulation to aid the Court in familiarizing itself with the site, the petition having been submitted for decision and the Court after hearing arguments of counsel being fully advised, makes the following Findings of Fact:

FINDINGS OF FACT

I

Petitioner is a California corporation duly authorized to do business in the State of California and the owner and operator of the restaurant and small boat harbor in Redwood City, San Mateo County, California, commonly known as PETE'S HARBOR, which restaurant is located on private land being leased by Petitioner.



II

Respondents are the Commission created by an act of the Legislature of the State of California, as set forth in Title 7.2 of the Government Code of the State of California, empowered, among other things, to grant or deny permits to place fill in San Francisco Bay and the respective members thereof.

III

On or about June 30, 1971, petitioner filed an application with respondents for a permit to build a new restaurant to replace an existing restaurant on privately owned land within the jurisdiction of the respondents, by constructing an approximately nine thousand square foot restaurant and chandlery partly on twenty-two timber pilings to be driven within the one hundred foot shoreline band and to remove three small shoreline buildings and the four most westerly buildings on a pile supported deck over water, and construct two roofed, open sided structures approximately six hundred seventy square feet in size within the 100 foot shoreline band.

IV

The intended improvement would benefit the general public by making available a more desirable public restaurant and by improving the appearance of the shoreline.

V

On or about October 20, 1971, respondents granted petitioner a permit to construct the proposed new restaurant subject to the following conditions:

"B. Public Access

1. Prior to commencement of any construction, the applicant shall execute an easement, in a form acceptable to counsel for BCDC, granting, for so long as the restaurant-chandlery structure exists and is occupied for any use, public rights of access for viewing, picnicking, fishing, walking and/or other passive recreational purposes, during daylight hours and subject to reasonable restrictions to assure security of person or property in the Harbor, to

(a) A strip of land extending 33 feet landward (southerly) from the line of Mean Higher High Water in Smith Slough and running approximately 160 feet westerly from the western edge of the proposed restaurant-chandlery building to the western property line.

(b) The existing, irregularly-shaped deck extending over the Bay adjacent to that strip, and

(c) All structures in the areas described in (a) and (b).

3. Applicant shall provide and maintain in good repair the facilities called for in its approved plans for the areas covered by the easement."



VI

Before and after said permit was granted petitioner informed respondents that petitioner would not accept the above described conditions of said permit.

VII

On or about October 28, 1971, petitioner demanded that respondents remove said conditions from said permit which respondents failed to do.

CONCLUSIONS OF LAW

From its Findings of Fact the Court makes the following Conclusions of Law:

I

This proceeding is authorized by and brought pursuant to Code of Civil Procedure § 1094.5.

The following conditions of the permit are not reasonable under the facts and circumstances involved:

"B. Public Access

1. Prior to commencement of any construction, the applicant shall execute an easement, in a form acceptable to counsel for BCDC, granting, for so long as the restaurant-chandlery structure exists and is occupied for any use, public rights of access for viewing, picnicking, fishing, walking and/or other passive recreational purposes, during daylight hours and subject to reasonable restrictions to assume security of person and property in the Harbor, to:

(a) A strip of land extending 33 feet landward (southerly) from the line of Mean Higher High Water in Smith Slough and running approximately 160 feet westerly from the western edge of the proposed restaurant-chandlery building to the western property line.

(b) The existing, irregularly-shaped deck extending over the Bay adjacent to that strip, and

(c) All structures in the areas described in (a) and (b).

3. Applicant shall provide and maintain in good repair the facilities called for in its approved plans for the areas covered by the easement."

A factor central to this conclusion is that petitioner proposes to replace an existing restaurant with a new restaurant. This is not a situation where a proposal for development in the bay or along the shoreline would substantially change the use of an area. The present ruling does not apply to such a situation or to any situation not before the court.

II

The intended improvement would cause no detriment to the public.

III

The attempt of the respondents to enforce the petitioner to accept the said conditions amounts to an abuse of discretion.

IV

Petitioner has no plain, speedy and adequate remedy in the ordinary course of law.

V

The petitioner is entitled to a writ of mandate requiring respondents to delete the said conditions.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 3, 1972.

/s/ Gerald Ragan

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN MATEO

PETE'S HARBOR ENTERPRISES, INC.,

Petitioner,

vs.

SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION, MELVIN B. LANE,  
WILLIAM D. EVERS, HARRY A. BRUNO, VICTOR  
CALVO, ROBERT COOP, BRANWELL FANNING, J.  
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WILLIAM C. WEBER, KENNETH HALL, TERRY A.  
FRANCOIS, NORMAN Y. MINETA, JOHN H. READING,  
and PHILIP L. JOERGER,

Respondents.

No. 164175

JUDGMENT FOR  
PETITIONER

This cause came regularly on for hearing before this Court pursuant to the petition of PETE'S HARBOR ENTERPRISES, INC., and a notice of hearing and the return thereto of respondents. CARLOS R. HULSE appeared as attorney for petitioner and EVELLE J. YOUNGER, Attorney General of the State of California, represented by E. CLEMENT SHUTE, JR., Deputy Attorney General appeared for respondents.

The Court having examined the evidence consisting of the relevant portions of the administrative record as stipulated to by the parties and two aerial photos entered into evidence by stipulation to aid the Court in familiarizing itself with the site, the petition having been submitted for decision and the Court after hearing arguments of counsel being fully advised and having made and caused to be filed its written findings of fact and conclusions of law and having directed that judgment and a peremptory writ of mandate should issue on the premises;

IT IS ORDERED, ADJUDGED AND DECREED:

1. That a peremptory writ of mandate issue commanding respondents to issue petitioner a fill permit deleting the following conditions:

"B. Public Access

1. Prior to commencement of any construction, the applicant shall execute an easement, in a form acceptable to counsel for BCDC, granting, for so long as the restaurant-chandlery structure exists and is occupied for any use, public rights of access for viewing, picnicking, fishing, walking and/or other passive recreational purposes, during daylight hours and subject to reasonable restrictions to assure security of person and property in the Harbor, to:

(a) A strip of land extending 33 feet landward (southerly) from the line of Mean Higher High Water in Smith Slough and running approximately 160 feet westerly from the western edge of the proposed restaurant-chandlery building to the western property line.

(b) The existing, irregularly-shaped deck extending over the Bay adjacent to that strip, and

(c) All structures in the areas described in (a) and (b).

3. Applicant shall provide and maintain in good repair the facilities called for in its approved plans for the areas covered by the easement."

2. That petitioner recover its costs and disbursements herein in the sum of \$

Dated: April 3, 1972.

/s/ Gerald Ragan

Judge of the Superior Court

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